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5 **UNITED STATES DISTRICT COURT**  
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7 **EASTERN DISTRICT OF CALIFORNIA**

8 LINDA ELAINE STITES-MOUNTS,  
9 Plaintiff,

Case No. 1:22-cv-00630-SKO

10 v. **ORDER ON PLAINTIFF'S SOCIAL  
11 KILOLO KIJAKAZI,  
12 Acting Commissioner of Social Security,  
13 Defendant.**

(Doc. 1)

14 /  
15 **I. INTRODUCTION**

16 Plaintiff Linda Elaine Stites-Mounts (“Plaintiff”) seeks judicial review of a final decision  
17 of the Commissioner of Social Security (the “Commissioner” or “Defendant”) denying her  
18 application for disability insurance benefits (“DIB”) under the Social Security Act (the “Act”).  
19 (Doc. 1.) The matter is currently before the Court on the parties’ briefs, which were submitted,  
20 without oral argument, to the Honorable Sheila K. Oberto, United States Magistrate Judge.<sup>1</sup>

21 **II. BACKGROUND**

22 Plaintiff was born on April 13, 1955, can communicate in English, has a high school  
23 education, and previously worked as an executive assistant. (Administrative Record (“AR”) 26,  
24 79, 90, 103, 199, 201, 202, 203, 217, 236, 644, 662.) Plaintiff filed a claim for DIB payments on  
25 March 5, 2015, alleging she became disabled on July 1, 2013, due to the effects of back, knee, hip,  
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<sup>1</sup> The parties have consented to the jurisdiction of the U.S. Magistrate Judge. (See Doc. 9.)

1 and joint pain, fibromyalgia, trigeminal neuralgia<sup>2</sup>, and breast cancer treatments. (AR 21, 23, 41,  
 2 79, 90, 91, 103, 104, 199, 200, 202, 217, 236, 632, 636, 640, 641, 677.)

3 Following a hearing, an Administrative Law Judge (ALJ) issued a written decision on  
 4 October 4, 2017, finding Plaintiff not disabled. (AR 16–28.) Plaintiff appealed the decision to the  
 5 district court, who, on March 19, 2020, remanded the case for further proceedings to evaluate the  
 6 third-party testimony and statements. (AR 711–25.) Upon remand, the Appeals Council directed  
 7 the assigned ALJ to offer Plaintiff the opportunity for a hearing and address the additional evidence  
 8 submitted, take any further action needed to complete the administrative record and issue a new  
 9 decision. (AR 728.) The ALJ held a hearing and issued a new written decision once again finding  
 10 Plaintiff not disabled.

11 **A. Relevant Medical Evidence<sup>3</sup>**

12 In February 2015, Plaintiff presented for an appointment with her primary care physician.  
 13 (AR 365–73.) She complained of dizziness and joint pain at her lower extremities. (AR 365.)  
 14 Plaintiff’s medications were adjusted to address knee pain and dizziness. (AR 373.)

15 In May 2015, Plaintiff presented for an orthopedic evaluation by Vincente R. Bernabe, D.O.  
 16 (AR 292–97.) Dr. Bernabe observed that Plaintiff had a normal tandem gait; she was able to  
 17 perform heel and toe walking without difficulty; she walked across the room without difficulty;  
 18 and she was able to ambulate without an assistive device. (AR 294.) He opined that Plaintiff could  
 19 perform medium exertional work, could frequently bend and stoops; and frequently perform agility  
 20 activities. (AR 297.)

21 Plaintiff underwent a psychological evaluation by J. Zhang, Psy.D., in August 2015. (AR  
 22 300–306.) No mental health treatment history was reported. (AR 301.) Plaintiff stated that she  
 23 has a “few friends” and “socializes regularly.” (AR 301.) Dr. Zhang noted that Plaintiff is able to  
 24 take care of her basic grooming and hygiene needs, drive herself, go out alone, pay bills and manage  
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26 <sup>2</sup> Trigeminal neuralgia “is a chronic pain condition that affects the trigeminal or 5th cranial nerve, one of the most  
 27 widely distributed nerves in the head . . .” and “causes extreme, sporadic sudden burning or shock-like facial pain that  
 lasts from a few seconds to two minutes per episode[.]” *Elliott v. Life Ins. Co. of N. Am., Inc.*, No. 16-CV-01348-  
 MMC, 2019 WL 2970843, at \*3 (N.D. Cal. July 9, 2019) (internal quotation marks and citations omitted).

28 <sup>3</sup> Because the parties are familiar with the medical evidence, it is summarized here only to the extent relevant to the  
 contested issues.

1 money appropriately and responsibly, and prepare simple meals. (AR 302.) Upon examination,  
2 Plaintiff was able to perform the serial sevens exercise, perform simple calculations, and spell the  
3 word “world” forward, but not backwards. (AR 302.) Her performance on the Wechsler Memory  
4 Scale (4th edition) showed that her memory was mildly impaired. (AR 304–305.) Dr. Zhang’s  
5 evaluation “did not find any significant mental impairment” and they opined only mild impairments  
6 in mental functional areas. (AR 305–06.)

7 Plaintiff attended a cardiology consult in October 2015. (AR 550–54.) Her fibromyalgia  
8 diagnosis was noted (AR 550), and she was treated with Lyrica, but experienced edema (AR 550).

9 In June 2016, Plaintiff presented for a follow-up appointment after treatment for breast  
10 cancer. (AR 610–11.) She reported that she “fatigues readily, but has good days and bad days,  
11 which she attributes to her fibromyalgia.” (AR 610.)

12 A physical examination by an orthopedist in March 2017 showed Plaintiff was alert,  
13 cooperative, and fully oriented. (AR 943.) In April 2017, Plaintiff established care with an arthritis  
14 specialist for evaluation of polyarthralgia. (AR 1165–66.) She complained of morning time joint  
15 stiffness. (AR 1165.) Upon examination, no synovitis was found, but multiple tender soft tissue  
16 points were noted. (AR 1166.) Her muscle strength was intact. (AR 1166.)

17 Plaintiff presented for a follow-up appointment with an arthritis specialist in June 2017.  
18 (AR 1171–72.) She complained of dull and burning pain in her legs that was rated an 8/10. (AR  
19 1171.) Upon examination, bilateral knee crepitus was noted, as well as multiple soft tissue points.  
20 (AR 1171.) No synovitis was indicated, and Plaintiff’s muscle strength was intact. (AR 1171.) It  
21 was noted that Plaintiff was taking Gabapentin for fibromyalgia. (AR 1171.)

22 In August 2017, Plaintiff reported to her physical therapist that she would be “out of town  
23 for the next couple of weeks.” (AR 966.)

24 In January 2018, Plaintiff presented for another appointment with the arthritis specialist.  
25 (AR 1173–74.) She reported feeling “worse [and] unable to function.” (AR 1173.) She  
26 complained of dull, sharp, constant, and burning diffuse body pain that is worse with activity. (AR  
27 1173.) Plaintiff rated the pain a 7/10. (AR 1173.) Her physical examination results were the same  
28 as the prior visit. (AR 1173–74.) In May 2018, Plaintiff’s oncologist documented that Plaintiff

1 had normal mood and intact cognition. (AR 1279–80.) She was also noted to be “completely  
2 ambulatory.” (AR 1279.)

3 Plaintiff again presented to the arthritis specialist in August 2018. (AR 1117–18.) She  
4 complained of fatigue, joint pain, joint swelling, muscle pain, muscle weakness, skin rash when  
5 exposed to sun, tingling, and numbness. (AR 1177.) Plaintiff rated her pain a 5-6/10. (AR 1177.)  
6 Her physical examination results remained unchanged. (AR 1178.)

7 In November 2018, Plaintiff returned to the arthritis specialist complaining of dull, sharp,  
8 and constant diffuse body pain that is worse with activity. (AR 1182.) Plaintiff rated the pain an  
9 8/10. (AR 1182.) Her physical examination results remained unchanged. (AR 1182.)

10 Later that month, Plaintiff presented to an oncology specialist complaining of left knee pain.  
11 (AR 1288–90.) Upon examination, Plaintiff had normal sensation and muscle tone, with full  
12 muscle strength. (AR 1289.) Her pulses were normal in her upper and lower extremities, and no  
13 joint swelling, deformity, edema, cyanosis, or clubbing was noted. (AR 1289.) Plaintiff denied  
14 anxiety, depression, hallucinations, and paranoia. (AR 1288.) She was noted to be “completely  
15 ambulatory.” (AR 1288, 1289.)

16 In December 2018, an examination by Plaintiff’s cardiology specialist indicated Plaintiff  
17 had “[n]o psychological symptoms” and exhibited euthymic mood. (AR 1120.)

18 Plaintiff presented to the emergency department in March 2019 complaining of vision  
19 changes. (AR 1046–64.) Plaintiff denied chest pain, palpitations, arthralgias, myalgias, dizziness,  
20 and headaches. (AR 1047.)

21 In January 2020, Plaintiff again complained of left knee pain to her oncology specialist.  
22 (AR 1300–1302.) Upon examination, Plaintiff had normal sensation and muscle tone, with full  
23 muscle strength. (AR 1301.) She was noted to be “completely ambulatory.” (AR 1300.) Her  
24 pulses were normal in her upper and lower extremities, and no joint swelling, deformity, edema,  
25 cyanosis, or clubbing was noted. (AR 1301.)

26 Later than month, Plaintiff followed up with her arthritis specialist. (AR 1186–87.) She  
27 complained of joint pain, muscle pain, tingling, and numbness. (AR 1186.) Plaintiff rated her pain  
28 an 8 out of 10. (AR 1186.) Upon examination, bilateral knee crepitus was noted, as well as multiple

1 soft tissue points. (AR 1186–87.) No synovitis was indicated, and Plaintiff’s muscle strength was  
2 intact. (AR 1187.)

3 In July 2020, Plaintiff presented for a telehealth visit with her arthritis specialist. (AR  
4 1188–89.) She reported “[d]oing well” and taking care of her husband with gastric cancer. (AR  
5 1189.) Plaintiff presented for a cardiology follow-up appointment in September 2020. (AR 1200–  
6 1210.) Her neurological examination was normal, with no sensory abnormalities noted. (AR  
7 1205–1206.)

8 In January 2021, Plaintiff presented for another appointment with her oncology specialist.  
9 (AR 1315–17.) She denied memory loss, anxiety, depression, hallucinations, and paranoia. (AR  
10 1315.) In September 2021, Plaintiff reported to her physical therapist that she was experiencing a  
11 burning sensation in the balls of her feet, right knee pain, and a lower backache. (AR 1236.) She  
12 stated that she “may be going through a fibromyalgia flare up.” (AR 1236.)

13 **B. Plaintiff’s Statements**

14 **1. June 2015 Adult Function Report**

15 In June 2015, Plaintiff completed an adult function report. (AR 227–35.) Plaintiff reported  
16 that fibromyalgia pain has “severely limited [her] mobility” and that it is “extremely difficult for  
17 [her] to sit, stand, or walk.” (AR 227.) She also reported nerve pain; difficulty sleeping due to  
18 pain; and difficulty stooping, bending, climbing, and driving long distances. (AR 228, 229, 232.)  
19 When asked to describe what she does from the time she wakes until she goes to bed, Plaintiff  
20 reported she sits, reads, watches television, performs “limited light housework [with] many sitting  
21 breaks in between,” and occasionally cooks. (AR 228.)

22 Plaintiff prepares simple meals daily, performs light housework, and does laundry. (AR  
23 229.) She can drive short distances, go out alone, and shop in stores weekly. (AR 229–30.) She  
24 can handle her finances. (AR 230.) She spends time with others, and regularly goes to church,  
25 Starbucks, restaurants, and her grandchildren’s’ sporting events. (AR 231.)

26 Plaintiff denied she had problems getting along with friends, family, neighbors, or others.  
27 (AR 232.) She also denied she had difficulty handling stress or changes in routine. (AR 233.)  
28 Plaintiff reported that the impairments require her to use an assistive device when “a lot of walking

1 is necessary.” (AR 233.) According to Plaintiff, she can walk one hundred to two hundred feet  
2 before needing a rest. (AR 232.)

3 **2. October 2016 Letter**

4 Plaintiff wrote a letter in October 2016 to her disability adjudicator inquiring about the  
5 status of her claim. (AR 182.) She wrote that she had “followed [her] doctor’s recommendations  
6 and directions every step of the way but continue to wake up screaming with severe knots and  
7 cramps in [her] legs.” (AR 182.) She continued:

8 I’ve participated in physical therapy and even went for a mental evaluation  
9 upon the request of your office and the doctor did nothing but insult my  
10 intelligence. I assure you that I do not have a mental condition that prevents  
11 me from working, nor am I too stupid (he challenged my IQ level for the  
12 responsibilities that I had) to hold a job.

13 [ . . . ]

14 My health has become more challenging daily as I am in constant pain  
15 which is why I can’t work. It has nothing to do with any mental illness or  
16 depression as he tried to claim.

17 (AR 182.)

18 **C. Plaintiff’s Husband’s Statement**

19 Plaintiff’s husband also completed a function report in June 2015. (AR 219–226.) He stated  
20 that Plaintiff sometimes babysits their grandchildren. (AR 220.) Plaintiff’s husband reported that  
21 Plaintiff can prepare meals that did not require standing for prolonged periods, and is able to  
22 perform cleaning chores such as washing clothes (30 minutes) and wiping counter (5 to 10 minutes).  
23 (AR 221.) She can drive a car and shop in stores for up to two and a half hours weekly. (AR 222.)  
24 According to Plaintiff’s husband, Plaintiff attends church and visits their daughter’s house. (AR  
25 223.) He stated that Plaintiff can walk about one hundred feet before needing a rest, and she requires  
26 an assistive device, including a walker, cane, and electric cart, for ambulation. (AR 225.)

27 **D. Administrative Proceedings**

28 The Commissioner denied Plaintiff’s application for benefits initially on May 29, 2015,  
29 and again on reconsideration on December 14, 2015. (AR 16, 120–23, 125–29.) Following a  
hearing on March 10, 2017 (AR 34–78), an ALJ issued a written decision on October 4, 2017,

1 finding Plaintiff not disabled. (AR 16–28.) Plaintiff appealed the decision to the district court,  
2 who, on March 19, 2020, remanded the case for further proceedings to evaluate the third-party  
3 testimony and statements. (AR 711–25.) Upon remand, the Appeals Council directed the  
4 assigned ALJ to offer Plaintiff the opportunity for a hearing and address the additional evidence  
5 submitted, take any further action needed to complete the administrative record and issue a new  
6 decision. (AR 728.)

7 On February 1, 2022, Plaintiff appeared with counsel and testified before the ALJ as to her  
8 alleged disabling conditions. (AR 653–62.) A vocational expert also testified. (AR 662–68.)

9 **1. Plaintiff’s March 2017 Testimony**

10 At the March 10, 2017, hearing, Plaintiff testified that she “doesn’t struggle with depression  
11 at all, that’s not [her] issue,” and that “just physical problems” prevent her from working. (AR 50.)  
12 She testified that she cooked, performed limited household chores such as dusting, laundry, and  
13 vacuuming. (AR 55–56.) According to Plaintiff, she only goes shopping with her husband. (AR  
14 55.) In her free time, Plaintiff watches her grandchildren’s sporting events and had been camping  
15 over Thanksgiving in a travel trailer. (AR 57–58.)

16 Plaintiff testified that she struggled to walk from her car to her grandchild’s classroom when  
17 she volunteers at their school. (AR 60.) She further testified that she and her husband babysit their  
18 grandchildren. (AR 60.)

19 **2. Plaintiff’s February 2022 Testimony**

20 Plaintiff testified that she was being treated with medication for fibromyalgia. (AR 659.)  
21 She said that daily pain makes it difficult to sit, stand, walk, sleep, and concentrate to some degree.  
22 (AR 659.) Plaintiff testified that she feels fatigued every day because pain interferes with her ability  
23 to sleep. (AR 659, 660.)

24 According to Plaintiff, she has not been treated formally for any psychological problems but  
25 that her treating physician has “tried different things,” such as medications. (AR 661.)

26 **3. Vocational Expert’s February 2022 Testimony**

27 A Vocational Expert (“VE”) testified at the hearing that Plaintiff had past work as an  
28 executive (administrative) assistant, Dictionary of Operational Titles (DOT) code 169.167-010,

1 which was sedentary exertional work (light as performed) with a specific vocational preparation  
2 (SVP)<sup>4</sup> of 7. (AR 662–63.)

3 The ALJ asked the VE to consider a person of Plaintiff's age, education, and with her work  
4 experience. (AR 664.) The VE was also to assume this person was capable of light exertional  
5 work except: the individual is able to stand and walk for two hours total in an eight-hour workday;  
6 is never able to climb ladders, ropes, or scaffolds; may occasionally climb ramps or stairs;  
7 occasionally balance, stoop, kneel, crouch, or crawl; occasionally push and pull with the bilateral  
8 lower extremities; and may have no exposure to vibration, unprotected heights and moving or  
9 heavy machinery. (AR 664.) The VE testified that such a person could perform Plaintiff's past  
10 relevant work. (AR 664.)

11 The ALJ asked, in a second hypothetical, whether a person could perform Plaintiff's past  
12 work if the exertional level in the first hypothetical was changed from light to sedentary. (AR 664–  
13 65.) The VE responded that such a person could perform Plaintiff's past work as generally  
14 performed in the national economy, but not as performed because of the requirement to lift boxes  
15 or packages up to 20 pounds. (AR 665.) In a third hypothetical, the ALJ asked the VE to consider  
16 the same limitations as hypothetical number one plus the additional limitation that the individual  
17 would be off-task 20 percent of the workday. (AR 665.) The VE testified that there would be no  
18 work that such an individual could perform. (AR 665.)

19 Plaintiff's counsel asked the VE whether the individual in either of the first two  
20 hypotheticals who required an unscheduled break of 45 minutes a day every day on a "random  
21 basis" could perform Plaintiff's work. (AR 665–66.) The VE testified that there would be no work  
22 such a person could perform. (AR 666.) The VE also testified that a limitation to unskilled work  
23 would also eliminate Plaintiff's past work. (AR 666.) The VE further testified that time off task  
24 of 15 percent or more, or a difficulty concentrating 25 percent of the workday, would preclude  
25 Plaintiff's past work. (AR 666.)

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26 <sup>4</sup> Specific vocational preparation, as defined in DOT, App. C, is the amount of lapsed time required by a typical worker  
27 to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific  
28 job-worker situation. DOT, Appendix C – Components of the Definition Trailer, 1991 WL 688702 (1991). Jobs in  
the DOT are assigned SVP levels ranging from 1 (the lowest level – "short demonstration only") to 9 (the highest level  
– over 10 years of preparation). *Id.*

1       **E. The ALJ's Decision**

2       In a decision dated February 28, 2022, the ALJ once again found that Plaintiff was not  
 3 disabled, as defined by the Act. (AR 629–45.) The ALJ conducted the five-step disability analysis  
 4 set forth in 20 C.F.R. § 404.1520. (AR 631–45.) The ALJ decided that Plaintiff met the insured  
 5 status requirements of the Act through December 31, 2018, and she had not engaged in substantial  
 6 gainful activity during the period from her alleged onset date of July 1, 2013, through her date last  
 7 insured of December 31, 2018 (step one). (AR 631.) At step two, the ALJ found Plaintiff's  
 8 following impairments to be severe: fibromyalgia; status post total right knee replacement; status  
 9 post total left knee replacement and repair of tendon rupture; bilateral knee osteoarthritis;  
 10 degenerative disc disease of the lumbar spine; obesity; trigeminal neuralgia; left breast cancer,  
 11 status post lumpectomy; hypertension; polyarthralgia; and heart disease. (AR 632–34.) Plaintiff  
 12 did not have an impairment or combination of impairments that met or medically equaled one of  
 13 the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (“the Listings”) (step three).  
 14 (AR 634–35.)

15       The ALJ then assessed Plaintiff's residual functional capacity (RFC)<sup>5</sup> and applied the  
 16 assessment at steps four and five. *See* 20 C.F.R. § 404.1520(a)(4) (“Before we go from step three  
 17 to step four, we assess your residual functional capacity . . . . We use this residual functional  
 18 capacity assessment at both step four and step five when we evaluate your claim at these steps.”).  
 19 The ALJ determined that, through the date last insured, Plaintiff had the RFC:

20       to perform light work as defined in 20 CFR [§] 404.1567(b) except [Plaintiff] is  
 21 able to stand and walk for 2 hours total in an 8 hour workday; is never able to climb  
 22 ladders, ropes, or scaffolds; may occasionally climb ramps or stairs; occasionally  
 23 balance, stoop, kneel, crouch or crawl; occasionally push and pull with the bilateral  
 lower extremities; and may have no exposure to vibration, unprotected heights and  
 moving or heavy machinery.

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25       <sup>5</sup> RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work  
 26 setting on a regular and continuing basis of 8 hours a day, for 5 days a week, or an equivalent work schedule. TITLES  
 27 II & XVI: ASSESSING RESIDUAL FUNCTIONAL CAPACITY IN INITIAL CLAIMS, Social Security Ruling (“SSR”) 96-8P  
 28 (S.S.A. July 2, 1996). The RFC assessment considers only functional limitations and restrictions that result from an  
 individual's medically determinable impairment or combination of impairments. *Id.* “In determining a claimant's  
 RFC, an ALJ must consider all relevant evidence in the record including, *inter alia*, medical records, lay evidence, and  
 ‘the effects of symptoms, including pain, that are reasonably attributed to a medically determinable impairment.’”  
*Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006).

1 (AR 635–44.) Although the ALJ recognized that Plaintiff’s impairments “could reasonably be  
2 expected to cause the alleged symptoms[,]” they rejected Plaintiff’s subjective testimony as “not  
3 entirely consistent with the medical evidence and other evidence in the record . . . .” (AR 638.)  
4 The ALJ determined that, given her RFC, Plaintiff was able to perform her past relevant work of  
5 executive assistant as generally performed (step four). (AR 644.) The ALJ concluded Plaintiff  
6 was not disabled at any time from July 1, 2013, the alleged onset date, through December 31, 2018,  
7 the date last insured. (AR 644–45.)

8 Because Plaintiff did not seek review of the ALJ’s decision before the Appeals Council, the  
9 decision became the final decision of the Commissioner. 20 C.F.R. § 404.981.

### 10 III. LEGAL STANDARD

#### 11 A. Applicable Law

12 An individual is considered “disabled” for purposes of disability benefits if he or she is  
13 unable “to engage in any substantial gainful activity by reason of any medically determinable  
14 physical or mental impairment which can be expected to result in death or which has lasted or can  
15 be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A).  
16 However, “[a]n individual shall be determined to be under a disability only if [their] physical or  
17 mental impairment or impairments are of such severity that [they are] not only unable to do [their]  
18 previous work but cannot, considering [their] age, education, and work experience, engage in any  
19 other kind of substantial gainful work which exists in the national economy.” *Id.* § 423(d)(2)(A).

20 “In determining whether an individual’s physical or mental impairment or impairments are  
21 of a sufficient medical severity that such impairment or impairments could be the basis of eligibility  
22 [for disability benefits], the Commissioner” is required to “consider the combined effect of all of  
23 the individual’s impairments without regard to whether any such impairment, if considered  
24 separately, would be of such severity.” *Id.* § 423(d)(2)(B). For purposes of this determination, “a  
25 ‘physical or mental impairment’ is an impairment that results from anatomical, physiological, or  
26 psychological abnormalities which are demonstrable by medically acceptable clinical and  
27 laboratory diagnostic techniques.” *Id.* § 423(d)(3).

28 “The Social Security Regulations set out a five-step sequential process for determining

1 whether a claimant is disabled within the meaning of the Social Security Act.” *Tackett v. Apfel*,  
2 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 20 C.F.R. § 404.1520). The Ninth Circuit has provided  
3 the following description of the sequential evaluation analysis:

4 In step one, the ALJ determines whether a claimant is currently engaged in  
5 substantial gainful activity. If so, the claimant is not disabled. If not, the ALJ  
6 proceeds to step two and evaluates whether the claimant has a medically severe  
7 impairment or combination of impairments. If not, the claimant is not disabled. If  
8 so, the ALJ proceeds to step three and considers whether the impairment or  
9 combination of impairments meets or equals a listed impairment under 20 C.F.R. pt.  
10 404, subpt. P, [a]pp. 1. If so, the claimant is automatically presumed disabled. If  
11 not, the ALJ proceeds to step four and assesses whether the claimant is capable of  
12 performing [their] past relevant work. If so, the claimant is not disabled. If not, the  
13 ALJ proceeds to step five and examines whether the claimant has the [RFC] . . . to  
14 perform any other substantial gainful activity in the national economy. If so, the  
15 claimant is not disabled. If not, the claimant is disabled.

16 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). “If a claimant is found to be ‘disabled’ or  
17 ‘not disabled’ at any step in the sequence, there is no need to consider subsequent steps.” *Tackett*,  
18 180 F.3d at 1098 (citing 20 C.F.R. § 404.1520).

19 “The claimant carries the initial burden of proving a disability in steps one through four of  
20 the analysis.” *Burch*, 400 F.3d at 679 (citing *Swenson v. Sullivan*, 876 F.2d 683, 687 (9th Cir.  
21 1989)). “However, if a claimant establishes an inability to continue her past work, the burden shifts  
22 to the Commissioner in step five to show that the claimant can perform other substantial gainful  
23 work.” *Id.* (citing *Swenson*, 876 F.2d at 687).

24 **B. Scope of Review**

25 “This court may set aside the Commissioner’s denial of [social security] benefits [only]  
26 when the ALJ’s findings are based on legal error or are not supported by substantial evidence in  
27 the record as a whole.” *Tackett*, 180 F.3d at 1097 (citation omitted). “Substantial evidence is  
28 defined as being more than a mere scintilla, but less than a preponderance.” *Edlund v. Massanari*,  
253 F.3d 1152, 1156 (9th Cir. 2001) (citing *Tackett*, 180 F.3d at 1098). “Put another way,  
substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to  
support a conclusion.” *Id.* (citing *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

29 “This is a highly deferential standard of review . . .” *Valentine v. Comm’r of Soc. Sec.*  
30 *Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). “The ALJ’s findings will be upheld if supported by

1 inferences reasonably drawn from the record.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th  
2 Cir. 2008) (citation omitted). Additionally, “[t]he court will uphold the ALJ’s conclusion when  
3 the evidence is susceptible to more than one rational interpretation.” *Id.*; *see, e.g., Edlund*, 253  
4 F.3d at 1156 (“If the evidence is susceptible to more than one rational interpretation, the court may  
5 not substitute its judgment for that of the Commissioner.” (citations omitted)).

6 Nonetheless, “the Commissioner’s decision ‘cannot be affirmed simply by isolating a  
7 specific quantum of supporting evidence.’” *Tackett*, 180 F.3d at 1098 (quoting *Sousa v. Callahan*,  
8 143 F.3d 1240, 1243 (9th Cir. 1998)). “Rather, a court must ‘consider the record as a whole,  
9 weighing both evidence that supports and evidence that detracts from the [Commissioner’s]  
10 conclusion.’” *Id.* (quoting *Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993)).

11 Finally, courts “may not reverse an ALJ’s decision on account of an error that is harmless.”  
12 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citing *Stout v. Comm’r, Soc. Sec. Admin.*,  
13 454 F.3d 1050, 1055–56 (9th Cir. 2006)). Harmless error “exists when it is clear from the record  
14 that ‘the ALJ’s error was inconsequential to the ultimate nondisability determination.’”  
15 *Tommasetti*, 533 F.3d at 1038 (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885 (9th Cir.  
16 2006)). “[T]he burden of showing that an error is harmful normally falls upon the party attacking  
17 the agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (citations omitted).

#### 18 IV. DISCUSSION

19 Plaintiff contends that the ALJ’s RFC determination is unsupported by substantial evidence  
20 because the ALJ failed to consider relevant medical evidence of record. (Doc. 13 at 14–17.)  
21 Plaintiff further asserts that the ALJ erred in discounting her subjective symptom testimony. (*See*  
22 *id.* at 17–20.)

23 The Acting Commissioner responds that that the ALJ’s RFC determination is supported by  
24 substantial, relevant evidence in the record. (Doc. 17 at 4–7.) The Acting Commissioner further  
25 contends that the ALJ’s discounting of Plaintiff’s subjective symptom statements was not  
26 erroneous. (*Id.* at 7–9.)

27 The Court addresses the parties’ contentions below, and finds that reversal is not warranted.

28 ///

1     **A. The ALJ Did Not Err in Formulating Plaintiff's RFC**

2         An RFC “is the most [one] can still do despite [their] limitations” and it is “based on all the  
 3 relevant evidence in [one’s] case record,” rather than a single medical opinion or piece of evidence.  
 4 20 C.F.R. § 404.1545(a)(1); *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) (“It is clear  
 5 that it is the responsibility of the ALJ, not the claimant’s physician, to determine residual functional  
 6 capacity.”). An ALJ’s RFC determination need not precisely reflect any particular medical  
 7 provider’s assessment. *See Turner v. Comm’r Soc. Sec. Admin.*, 613 F.3d 1217, 1222-23 (9th Cir.  
 8 2010) (the ALJ properly incorporated physician’s observations in the RFC determination while, at  
 9 the same time, rejecting the implication that plaintiff was unable to “perform simple, repetitive  
 10 tasks in an environment without public contact or background activity”).

11         In making the RFC determination, the ALJ considers those limitations for which there is  
 12 record support that does not depend on properly rejected evidence and subjective complaints. *See*  
 13 *Batson v. Comm’r of Soc. Sec.*, 359 F.3d 1190, 1197 (9th Cir. 2004). A reviewing court “will  
 14 affirm the ALJ’s determination of [a claimant’s] RFC if the ALJ applied the proper legal standard  
 15 and his decision is supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1217  
 16 (9th Cir. 2005).

17         **1. Fibromyalgia**

18         Plaintiff asserts that the ALJ’s RFC assessment is erroneous first because it lacks functional  
 19 restrictions resulting from her severe impairment of fibromyalgia. (*See* Doc. 13 at 14.) Not so.

20         The nature of the ALJ’s responsibility is to interpret the evidence of record, including  
 21 medical evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Such a responsibility  
 22 does not result in the ALJ committing legal error when they assess an RFC that is consistent with  
 23 the record. *See Mills v. Comm’r of Soc. Sec.*, No. 2:13-CV-0899-KJN, 2014 WL 4195012, at \*4  
 24 (E.D. Cal. Aug. 22, 2014) (“[I]t is the ALJ’s responsibility to formulate an RFC that is based on  
 25 the record as a whole, and thus the RFC need not exactly match the opinion or findings of any  
 26 particular medical source.”) (citing *Magallanes v. Bowen*, 881 F.2d 747, 753 (9th Cir. 1989)).

27         Here, the ALJ deemed fibromyalgia a severe impairment at step two (AR 632–34), and  
 28 went on to discuss the medical evidence throughout the relevant period demonstrating that, despite

1 her complaints of fibromyalgia symptoms, Plaintiff's physical examination results showed full  
 2 muscle strength, complete ambulation, normal sensation, normal muscle tone, normal pulses, and  
 3 no joint swelling, synovitis, deformity, edema, cyanosis, or clubbing. (AR 294, 1166, 1171, 1173–  
 4 74, 1178, 1182, 1187, 1205–06, 1279, 1289, 1301.) The ALJ also evaluated the medical opinions  
 5 of State agency physicians Drs. Laiken and Brodsky; consultative examiner Dr. Bernabe; and  
 6 Plaintiff's treating physician Dr. Branch. (See AR 641–43.) The ALJ considered the weight of  
 7 these opinions, as the ALJ is charged to do, and rejected limitations to medium or the full range of  
 8 light exertional activity, finding instead that the opinions—as well as the evidence of record  
 9 showing Plaintiff's “orthopedic impairments” and her “subjective allegations of pain”—supported  
 10 a finding of light work with additional limitations. (AR 642.) The ALJ then formulated Plaintiff's  
 11 RFC, which included additional physical limitations beyond those found by opining physicians and  
 12 those directed to her allegations of fibromyalgia pain. (*Compare* AR 635 with AR 642.)<sup>6</sup> *See Mills*,  
 13 2014 WL 4195012, at \*4 (finding argument that the ALJ erred in formulating an RFC lacked merit  
 14 where the ALJ “carefully analyzed the various medical opinions, treatment records, and plaintiff's  
 15 own testimony in formulating an RFC.”). *See also* 20 C.F.R. § 404.1527(d)(2) (“the final  
 16 responsibility for deciding [RFC] is reserved to the Commissioner), § 404.1545(a)(1) (“We will  
 17 assess your residual functional capacity based on all the relevant evidence in your case record.”).

18 Plaintiff does not challenge the ALJ's treatment of the medical opinion evidence. Instead,  
 19 she asserts that the ALJ “bases her residual functional capacity assessment to a large extent on the  
 20 opinions of the state agency medical consultants who were neither examining nor treating  
 21 physicians between May and December of 2015.” (Doc. 13 at 14.) Such contention is belied by  
 22 the record. As set forth above, the ALJ expressly rejected portions of state agency physician Dr.  
 23 Brodsky's opinion, finding a more restrictive RFC than they opined. (See AR 642.)

24 Plaintiff further contends that the ALJ “ignored and rejected substantial evidence of record  
 25 in this case documenting [her] fibromyalgia symptoms as well as her lower extremity symptoms.”  
 26 (Doc. 13 at 15.) Plaintiff, however, does not identify a single piece of evidence that the ALJ  
 27

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28 <sup>6</sup> The ALJ's RFC assessment is also based on consideration of Plaintiff's subjective complaint testimony, which, as  
 set forth more fully below, the ALJ properly discredited.

1 allegedly ignored or rejected. The ALJ’s decision makes clear that they considered all relevant  
2 evidence of record—including those which post-dated the adjudicative period. (See, e.g., AR 639–  
3 41 (discussing medical records from 2019–2021).) Plaintiff has not shown otherwise, or that the  
4 ALJ’s RFC assessment did not consider her fibromyalgia symptoms.

5 **2. Affective Disorder**

6 Plaintiff next contends that the ALJ’s RFC determination is unsupported by substantial  
7 evidence because the ALJ failed to consider the effects of Plaintiff’s non-severe affective disorder.  
8 (Doc. 13 at 15–16.) The Court disagrees.

9 The ALJ stated in their RFC findings that they “considered all symptoms and the extent to  
10 which these symptoms can reasonably be accepted as consistent with the objective medical  
11 evidence . . . .” (AR 635.) But the medical record as summarized by the ALJ contains almost no  
12 evidence of Plaintiff’s affective disorder symptomatology to be considered. The consultative  
13 examiner Dr. Zhang “did not find any significant mental impairment” and they opined only mild  
14 impairments in mental functional areas—an opinion which is unchallenged by Plaintiff. (AR 305–  
15 06.) The objective medical evidence also shows a dearth of affective disorder symptoms. For  
16 example, mental status examinations throughout the relevant period documented Plaintiff’s normal  
17 mood, intact cognition, and lack of “psychological symptoms.” (AR 1120, 1279–80.) There is no  
18 record of any formal mental health treatment. (AR 301, 661.)

19 Perhaps most compellingly, as the ALJ points out (*see* AR 633, 634, 636), Plaintiff herself  
20 has consistently disavowed any mental impairment symptomatology throughout the relevant period  
21 (and even as recently as January 2021). She did not identify any complaints of mental problems to  
22 the consultative examiner. (AR 300.) She denied anxiety, depression, hallucinations, paranoia,  
23 and memory loss during medical appointments. (AR 1288, 1315.) She stated in her function report  
24 that she does not have any problem getting along with others, nor does she have difficulty handling  
25 stress or changes in routine. (AR 233.) She testified at the first hearing that she “doesn’t struggle  
26 with depression at all, that’s not [her] issue,” and that “just physical problems” prevent her from  
27 working. (AR 50.) And she wrote to her disability adjudicator that she “do[es] not have a mental  
28 condition that prevents [her] from working” and that her inability to work “has nothing to do with

1 any mental illness or depression.” (AR 182.)

2 Plaintiff again does not identify what “evidence of Plaintiff’s diagnosed mental  
3 impairments” that the ALJ “wholly ignored.” (Doc. 13 at 16.) Moreover, mere diagnosis alone  
4 does not establish a limitation in the ability to work. *See Key v. Heckler*, 754 F.2d 1545, 1549 (9th  
5 Cir. 1985) (mere diagnosis of an impairment does not show disability).

6 Plaintiff’s reliance on *Hutton v. Astrue*, 491 Fed. App’x 850 (9th Cir. 2012) is unavailing.<sup>7</sup>  
7 (Doc. 13 at 16.) There, the Ninth Circuit found an ALJ erred by failing to include the claimant’s  
8 post-traumatic stress disorder (PTSD) in the assessment of the claimant’s RFC. At step two the  
9 ALJ determined the claimant’s PTSD existed but was nonsevere pursuant to 20 C.F.R. §  
10 404.1520a(c)(3). The court observed that pursuant to 20 C.F.R. § 404.1545(a)(2), the ALJ was  
11 required to consider the PTSD in determining the claimant’s RFC, but he did not. *Id.* at 850–51.  
12 Instead, the ALJ discredited the claimant, his treating physicians’ opinions and the Veterans  
13 Administration’s disability rating. *Id.* at 850. The court did not, however, base its reversal on these  
14 actions by the ALJ. *Id.* Instead, the court took exception to the ALJ’s mischaracterization of the  
15 claimant’s wife’s testimony, finding that the claimant lacked credibility. *Id.* The ALJ found the  
16 claimant’s PTSD claims were “in great doubt” and excluded the claimant’s PTSD from  
17 consideration. *Id.* The Ninth Circuit held this was legal error.

18 Here, the ALJ specifically considered Plaintiff’s non-severe mental impairments in  
19 evaluating Plaintiff’s RFC and did not confine their assessment to the adverse credibility  
20 determination. In particular, in addition to Plaintiff’s repeated denials of mental impairment set  
21 forth above, the ALJ considered the opinion of consultative examiner Dr. Zhang, who opined that  
22 Plaintiff’s mental impairments only mildly impaired her ability to function. (AR 634.) The ALJ  
23 specifically noted at the conclusion of his step two analysis that their RFC assessment “reflects the  
24 degree of limitation the undersigned has found in the ‘paragraph B’ mental function analysis.” (AR  
25 634.) Although the ALJ did not extensively discuss Plaintiff’s mental impairments at step four,  
26 they thoroughly discussed the evidence supporting their findings at step two and incorporated them  
27 by reference in their RFC analysis. An ALJ is required to discuss and evaluate evidence that

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28 <sup>7</sup> *Hutton* is an unpublished decision that is not binding precedent on this Court. *See generally* Fed. R. App. P. 32.1

1 supports their conclusion; they are not required to do so under any specific heading . *See Lewis v.*  
 2 *Apfel*, 236 F.3d 503. 513 (9th Cir. 2001). The Court finds the ALJ considered Plaintiff's mild  
 3 mental limitations in their RFC analysis.<sup>8</sup>

4 In sum, the Court finds that the ALJ supported their determination that Plaintiff was capable  
 5 of limited light work with substantial evidence in the record. Plaintiff does not demonstrate  
 6 otherwise. She does not specify what additional functional limitations resulting from her  
 7 fibromyalgia or affective disorder that were not accounted for in the ALJ's RFC assessment. Nor  
 8 does she otherwise show any inconsistency between the medical record and her RFC. To the extent  
 9 Plaintiff is advocating for an alternative interpretation of the evidence in the record, the Court will  
 10 not second guess the ALJ's reasonable interpretation, even if such evidence could give rise to  
 11 inferences more favorable to Plaintiff. *See Molina*, 674 F.3d at 1110. Nor is the ALJ required to  
 12 discuss each piece of medical evidence in the record, as Plaintiff's briefing suggests. *Howard ex*  
*rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003). While Plaintiff may disagree with the  
 14 RFC, the Court must nevertheless uphold the ALJ's determination because it is a rational  
 15 interpretation of the evidence. *See Ford v. Saul*, 950 F.3d 1141, 1159 (9th Cir. 2020) ("Our review  
 16 of an ALJ's fact-finding for substantial evidence is deferential"); *Thomas v. Barnhart*, 278 F.3d  
 17 947, 954 (9th Cir. 2002).

18 **B. The ALJ Properly Discredited Plaintiff's Testimony**

19 **1. Legal Standard**

20 In evaluating the credibility of a claimant's testimony regarding subjective pain, an ALJ  
 21 must engage in a two-step analysis. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). First,  
 22 the ALJ must determine whether the claimant has presented objective medical evidence of an  
 23 underlying impairment that could reasonably be expected to produce the pain or other symptoms  
 24 alleged. *Id.* The claimant is not required to show their impairment "could reasonably be expected  
 25 to cause the severity of the symptom [they] ha[ve] alleged; [they] need only show that it could  
 26 reasonably have caused some degree of the symptom." *Id.* (quoting *Lingenfelter v. Astrue*, 504

27  
 28 <sup>8</sup> Plaintiff also cites *Gates v. Berryhill*, No. ED CV 16-00049 AFM, 2017 WL 2174401, at \*2 (C.D. Cal. May 16, 2017) (Doc. 13 at 16), which relies on *Hutton* and is distinguishable for the same reason discussed above.

1 F.3d 1028, 1036 (9th Cir. 2007)). If the claimant meets the first test and there is no evidence of  
2 malingering, the ALJ can only reject the claimant’s testimony about the severity of the symptoms  
3 if they give “specific, clear and convincing reasons” for the rejection.<sup>9</sup> *Id.* As the Ninth Circuit  
4 has explained:

5 The ALJ may consider many factors in weighing a claimant’s credibility,  
6 including (1) ordinary techniques of credibility evaluation, such as the claimant’s  
7 reputation for lying, prior inconsistent statements concerning the symptoms, and  
8 other testimony by the claimant that appears less than candid; (2) unexplained or  
9 inadequately explained failure to seek treatment or to follow a prescribed course  
of treatment; and (3) the claimant’s daily activities. If the ALJ’s finding is  
supported by substantial evidence, the court may not engage in second-guessing.

10 *Tommasetti*, 533 F.3d at 1039 (citations and internal quotation marks omitted); *see also Bray v.*  
11 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1226–27 (9th Cir. 2009). Other factors the ALJ may  
12 consider include a claimant’s work record and testimony from physicians and third parties  
13 concerning the nature, severity, and effect of the symptoms of which he complains. *Light v. Social*  
14 *Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

15 The clear and convincing standard is “not an easy requirement to meet,” as it is ““the most  
16 demanding required in Social Security cases.”” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir.  
17 2014) (quoting *Moore v. Comm’r of Social Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).  
18 General findings are not enough to satisfy this standard; the ALJ ““must identify what testimony is  
19 not credible and what evidence undermines the claimant’s complaints.”” *Burrell v. Colvin*, 775  
20 F.3d 1133, 1138 (9th Cir. 2014) (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)).

21 **2. Analysis**

22 As set forth above, the ALJ found Plaintiff’s “medically determinable impairments could  
23 reasonably be expected to cause the alleged symptoms.” (AR 638.) The ALJ also found that  
24 “[Plaintiff’s] statements concerning the intensity, persistence and limiting effects of these  
25 symptoms are not entirely consistent with the medical evidence and other evidence in the record.”  
26 (AR 638.) Since the ALJ found Plaintiff’s “medically determinable impairments could reasonably

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28 <sup>9</sup> The Court rejects the Acting Commissioner’s contention that a lesser standard of review applies. (See Doc. 17 at 7  
n.3.)

1 be expected to cause the alleged symptoms,” the only remaining issue is whether the ALJ provided  
2 “specific, clear and convincing reasons” for Plaintiff’s adverse credibility finding. *See Vasquez*,  
3 572 F.3d at 591.

4 Here, the ALJ found Plaintiff’s statements not credible because they are inconsistent with  
5 both the medical evidence and her reported daily activities. (AR 28–29.) The Court takes each  
6 finding in turn.

7 a. Inconsistency with Medical Evidence

8 Plaintiff testified that daily pain makes it difficult for her to sit, stand, walk, sleep,  
9 concentrate, stoop, bend, climb, and drive long distances. (AR 60, 227, 228, 229, 232, 659.)  
10 However, the ALJ found Plaintiff’s subjective symptom testimony to be inconsistent with “other  
11 evidence and the observations of others,” as well as with evidence of Plaintiff’s “improved  
12 condition.” (AR 636, 637.)

13 An ALJ may not reject a claimant’s subjective complaints based solely on a lack of medical  
14 evidence to fully corroborate the alleged severity of [the impairment].” *Burch*, 400 F.3d at 680.  
15 Nonetheless, “lack of medical evidence . . . is a factor that the ALJ can consider in his credibility  
16 analysis.” *Burch*, 400 F.3d at 681. *See also Moisa v. Barnhart*, 367 F.3d 882, 885 (9th Cir. 2004);  
17 *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999). Stated differently,  
18 “[a]lthough the inconsistency of objective findings with subjective claims may not be the sole  
19 reason for rejecting subjective complaints of pain, it is one factor which may be considered with  
20 others.” *Salas v. Colvin*, No. 1:13-cv-00429-BAM, 2014 WL 4186555, at \*6 (E.D. Cal. Aug. 21,  
21 2014) (citations omitted).

22 Here, as summarized by the ALJ and detailed above (*see* Section 4.A.1, *supra*), the record  
23 shows complete ambulation, full muscle strength, normal muscle tone, normal pulses, and no joint  
24 swelling, synovitis, deformity, edema, cyanosis, or clubbing. (AR 294, 1166, 1171, 1173–74,  
25 1178, 1182, 1187, 1205–06, 1279, 1289, 1301.) Consultative examiner Dr. Bernabe noted that  
26 Plaintiff exhibited a normal tandem gait; she was able to perform heel and toe walking without  
27 difficulty; she walked across the room without difficulty; and she was able to ambulate without an  
28 assistive device. (AR 294.)

1       As the ALJ observed, the record also shows that Plaintiff's condition had improved. In  
2 March 2019, Plaintiff denied chest pain, palpitations, arthralgias, myalgias, dizziness, and  
3 headaches. (AR 1047.) She reported “[d]oing well” in July 2020 and taking care of her husband  
4 with gastric cancer. (AR 1189.) *See* 20 C.F.R. § 404.1529(c)(3)(iv); *see also Warre v. Comm'r,*  
5 439 F.3d 1001, 1006 (9th Cir. 2006); *Morgan*, 169 F.3d at 599 (ALJ's adverse credibility  
6 determination properly accounted for physician's report of improvement); *Odle v. Heckler*, 707  
7 F.2d 439, 440 (9th Cir. 1983) (affirming denial of benefits and noting that claimant's impairments  
8 were responsive to treatment).

9       The Court finds the ALJ's conclusion that the evidentiary record undermines Plaintiff's  
10 subjective statements and testimony is supported by substantial evidence. It is therefore one of two  
11 clear and convincing reasons for discounting Plaintiff's subjective symptom testimony. *See*  
12 *Molina*, 674 F.3d at 1113 (concluding that the ALJ properly discredited claimant testimony based  
13 on inconsistencies with objective medical evidence).

14       b.       Activities of Daily Living

15       Next, the ALJ determined that Plaintiff's activities of daily living as described by her (and  
16 her husband) were “specifically inconsistent with [Plaintiff's] subjective complaints about chronic  
17 pain rendering her unable to perform activities of daily life.” (AR 637.) As summarized by the  
18 ALJ, the record demonstrates Plaintiff is able to: take care of her basic grooming and hygiene needs  
19 (AR 302); prepare simple meals daily (AR 55–56, 229, 302); perform light housework, such as  
20 laundry, dusting, and vacuuming (AR 55–56, 221, 229); drive a car (AR 222, 229–30); and shop  
21 in stores weekly (AR 55, 222, 229–30). She “socializes regularly,” going to church, Starbucks,  
22 restaurants, and her grandchildren's’ sporting events. (AR 223, 231, 301.) Plaintiff also babysits  
23 her grandchildren (AR 220), and travels out of town to stay for multiple weeks. (AR 966.) One  
24 such trip was a camping trip over the Thanksgiving holiday, staying in a travel trailer. (AR 57–  
25 58.)

26       An ALJ may properly consider a claimant's daily activities when evaluating credibility.  
27 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (the nature of daily activities may be considered  
28 when evaluating credibility). In evaluating a claimant's credibility, an ALJ may also consider

1 inconsistencies between the claimant's testimony and the claimant's conduct and whether the  
2 claimant engages in daily activities inconsistent with the alleged symptoms. *Molina*, 674 F.3d at  
3 1112. Even where those activities suggest some difficulty functioning, they are grounds for  
4 discrediting Plaintiff's testimony to the extent that they contradict claims of a totally debilitating  
5 impairment. *Id.* at 1113.

6 The Court finds that Plaintiff's above-described activities tend to suggest that she may still  
7 be able to perform, on a sustained basis, the basic demands of her past relevant work as an executive  
8 assistant (*see AR* 644). *See Fair*, 885 F.2d at 603 (finding that if a claimant has the ability to  
9 perform activities "that involved many of the same physical tasks as a particular type of job, it  
10 would not be farfetched for an ALJ to conclude that the claimant's pain does not prevent her from  
11 working"); *see also, e.g., Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175 (9th Cir. 2008) (finding  
12 that the ALJ sufficiently explained his reasons for discrediting the claimant's testimony because  
13 the record reflected that the claimant performed normal activities of daily living, including cooking,  
14 housecleaning, doing laundry, and helping her husband managing finances); *Morgan*, 169 F.3d at  
15 600 (ALJ's determination regarding claimant's ability to "fix meals, do laundry, work in the yard,  
16 and occasionally care for his friend's child" was a specific finding sufficient to discredit the  
17 claimant's credibility); *Kelly v. Astrue*, 471 F. App'x 674, 677 (9th Cir. 2012) (holding that ALJ  
18 properly made an adverse credibility finding because, in part, claimant's daily activities included  
19 driving, washing the dishes, shopping, and caring for her two children); *Nelson v. Colvin*, No. 1:15-  
20 cv-00696-SKO, 2016 WL 3407627, at \*20 (E.D. Cal. June 20, 2016) (ALJ properly discredited  
21 subjective complaints of claimant who suffered from chronic back problems where claimant  
22 engaged in activities such as preparing simple meals, washing dishes, driving a car, shopping for  
23 groceries and household supplies 2-3 times a week, walking up to a mile, using a computer for  
24 about half an hour at a time, visiting with family, mopping and vacuuming, independently handling  
25 her own finances, and doing yoga tapes at home.).

26 As Plaintiff points out, the record also contains some contrary evidence, such as Plaintiff's  
27 statements that her ability to perform some household chores is hampered by pain. (*See, e.g., AR*  
28 56, 228, 229.) Yet the ALJ's decision properly recognized that she has some work limitations

1 because of such pain. (See AR 643 (assessing an RFC for a “range of less than light work” because  
2 the ALJ “agrees that [Plaintiff] suffers from some pain and limitations”.) The Court concludes,  
3 however, that the ALJ properly discredited Plaintiff’s testimony that her pain renders her  
4 **completely** unable to work.<sup>10</sup> *Fair*, 885 F.2d at 604; *see also Bunnell v. Sullivan*, 947 F.2d 341,  
5 346 (9th Cir. 1991) (“So long as the adjudicator makes specific findings that are supported by the  
6 record, the adjudicator may discredit the claimant’s allegations based on inconsistencies in the  
7 testimony or on relevant character evidence.”). Where the ALJ makes a reasonable interpretation  
8 of Plaintiff’s testimony, it is not the Court’s role to second-guess it. *Rollins v. Massanari*, 261 F.3d  
9 853, 857 (9th Cir. 2001) (affirming ALJ’s credibility determination even where the claimant’s  
10 testimony was somewhat equivocal about how regularly she was able to keep up with all the  
11 activities and noting that the ALJ’s interpretation “may not be the only reasonable one”).

12 **V. CONCLUSION AND ORDER**

13 After consideration of Plaintiff’s and the Acting Commissioner’s briefs and a thorough  
14 review of the record, the Court finds that the ALJ’s decision is supported by substantial evidence  
15 and is therefore AFFIRMED.

16 The Clerk of this Court is DIRECTED to enter judgment in favor of Defendant Kilolo  
17 Kijakazi, Acting Commissioner of Social Security, and against Plaintiff.

18  
19 IT IS SO ORDERED.

20 Dated: August 4, 2023

/s/ Sheila K. Oberto  
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28 UNITED STATES MAGISTRATE JUDGE

<sup>10</sup> Plaintiff also attacks the ALJ’s “rejection” of third-party statements, arguing that the ALJ “fail[ed] to properly consider them.” (Doc. 13 at 20.) Other than this naked assertion, devoid of any citation to the record, Plaintiff offers no argument to support her contention. The Court declines to formulate one for her. *See, e.g., Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“When reading [the plaintiff’s] brief, one wonders if [the plaintiff], in its own version of the ‘spaghetti approach,’ has heaved the entire contents of a pot against the wall in hopes that something would stick. We decline, however, to sort through the noodles in search of [plaintiff’s] claim.”) (citing *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (“A skeletal ‘argument,’ really nothing more than an assertion, does not preserve a claim...[j]udges are not like pigs, hunting for truffles buried in briefs.”)). *See also Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994) (“We will not manufacture arguments for an appellant, and a bare assertion does not preserve a claim....”); *Hibbs v. Dept. of Hum. Resources*, 273 F.3d 844, 873 n.34 (deeming a one-sentence argument “too undeveloped to be capable of assessment.”).